

Schedule 3: Format of the Escrow Agreement

(ON APPROPRIATE STAMP PAPER)

THIS ESCROW AGREEMENT (this **Escrow Agreement**) is entered into at [] on [] by and among:

- (1) **UTTAR PRADESH JAL NIGAM**, a statutory body constituted under the Uttar Pradesh Water Supply and Sewerage Act, 1975, with its registered office at 6, Rana Pratap Marg, Lucknow - 226001 (hereinafter referred to as the **Jal Nigam**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (2) **NATIONAL MISSION FOR CLEAN GANGA**, a statutory body constituted under the Environment (Protection) Act, 1986, with its registered office at 1st Floor, Major Dhyanchand National Stadium, India Gate, New Delhi - 110002 (hereinafter referred to as **NMCG**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (3) [_____][*insert name of the Concessionaire*], a company organized, incorporated, registered and existing under the Companies Act, with its registered office at _____ [*insert address*] acting through _____, _____ [*insert name of the authorised signatory and his/her designation*] duly authorized by resolution dated _____ [*insert date of the Board Resolution*] (hereinafter referred to as the **Concessionaire**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns).

AND

- (4) [*Insert name of Escrow Bank*], a bank duly constituted in accordance with Applicable Laws and carrying on the business of banking in India as a Scheduled Commercial Bank, with its registered office at [*insert address*] and acting for the purposes of this Escrow Agreement through its branch office at [*insert address*] (hereinafter referred to as **Escrow Bank**, which expression shall unless repugnant to the context or meaning thereof includes its successors and permitted assigns).

The Jal Nigam, NMCG, the Concessionaire and the Escrow Bank are collectively referred to as **Parties** and individually as **Party**.

WHEREAS:

- A. With a view to implement the NamamiGange programme and the Ganga 2016 Order, the Jal Nigam, in association with NMCG, has decided to undertake the development of an STP with a proposed Design Capacity of 50 MLD along with other Facilities and Associated Infrastructure at Varanasi on a PPP basis, through a hybrid annuity model.

- B. For this purpose, the Jal Nigam selected the Concessionaire post a bid process to: (i) design, develop, finance, construct, operate and maintain the Facilities on the Site; and (ii) rehabilitate, operate, and maintain the Associated Infrastructure on the Site, and after the expiry of the Term, transfer the Facilities and the Associated Infrastructure to the Jal Nigam (collectively the **Project**).
- C. The Jal Nigam, NMCG and the Concessionaire executed a Concession Agreement dated [] to implement the Project (**Concession Agreement**), which is annexed to this Escrow Agreement.
- D. In consideration of the Concessionaire designing, developing, financing, constructing, rehabilitating, operating and maintaining the Facilities and the Associated Infrastructure on the Site for the Term, NMCG is required to pay the Concessionaire: (i) during the Construction Period, the Construction Payments upon satisfactory completion of Payment Milestones; and (ii) during the O&M Period, O&M Payments comprising the Capex Annuity, the O&M Charges and the Power Charges (subject to the cap of the Power Charges based on the Guaranteed Energy Consumption),
- E. As per the provisions of the Concession Agreement, NMCG, the Jal Nigam, the Concessionaire are required to enter into an escrow agreement with an escrow bank and NMCG is required to open an escrow account with such escrow bank and maintain the Minimum Escrow Balance for the payment of the Construction Payments and the O&M Payments.
- F. The escrow account shall be funded by NMCG in accordance with the terms of this Escrow Agreement and such account shall serve to secure NMCG's payment obligations towards the Concessionaire under the Concession Agreement.
- E. The Escrow Bank is willing to serve as an escrow bank in accordance with the terms and conditions of this Escrow Agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 Capitalized terms used but not defined in this Escrow Agreement shall have the meaning given to them in the Concession Agreement.

1.2 In this Escrow Agreement, unless the context otherwise requires:

- (a) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (b) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (c) Headings in this Escrow Agreement are for convenience of reference only.
- (d) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.

- (e) References to any date or time of day are to Indian Standard Time; any reference to day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
- (f) The references to any agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- (g) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing. Where any notice, consent or approval is to be given by either of the Parties, the notice, consent or approval shall be given on their behalf only by any authorized persons.
- (h) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- (i) The provisions of the clauses of this Escrow Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the clauses.
- (j) In the event of any ambiguities or discrepancies between two clauses of this Escrow Agreement, the provisions of the specific clause relevant to the issue under consideration shall prevail over those in other clauses.
- (k) The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Escrow Agreement.

2. **ESCROW ACCOUNT**

2.1 **Appointment**

- (a) NMCG, the Jal Nigam and the Concessionaire hereby appoint the Escrow Bank to serve as the escrow bank for the purposes of this Escrow Agreement and the Escrow Bank hereby accepts this appointment.
- (b) NMCG hereby settles in trust with the Escrow Bank a sum of INR 1,000 (Rupees one thousand). The Escrow Bank has accepted the above amount of INR 1,000 (Rupees one thousand) in trust declared and, subject to the terms and conditions in this Escrow Agreement, agreed to act as trustee for the benefit of the Concessionaire, NMCG and the Jal Nigam.
- (c) The Escrow Bank shall hold and safeguard the Escrow Account and any monies held therein, during the term of this Escrow Agreement and shall treat the amount in the Escrow Account as monies deposited by NMCG with the Escrow Bank in trust in accordance with the provisions of this Escrow Agreement. In performing its functions

and duties under this Escrow Agreement, the Escrow Bank shall act as an agent of NMCG, the Jal Nigam and the Concessionaire.

2.2 Escrow Account

- (a) Within 5 days of the date of this Escrow Agreement, NMCG shall establish a bank account in the name of [●], which shall be an interest bearing, no lien account, denominated in Indian Rupees for the benefit of the Concessionaire (the **Escrow Account**).
- (b) Immediately upon opening the Escrow Account, the Escrow Bank shall provide details of the Escrow Account in writing to the Concessionaire and the Jal Nigam, including the date of opening of the Escrow Account.
- (c) The Parties agree and acknowledge that:
 - (i) the Escrow Account shall be opened pursuant to, and specifically for the purposes of, this Escrow Agreement and shall be used and operated only for the purposes and in the manner provided in this Escrow Agreement and for no other use or purposes and in no other manner;
 - (ii) the Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Escrow Agreement and its usual practices and applicable regulations;
 - (iii) the Escrow Bank and the Concessionaire, after consultation with NMCG, shall agree on the detailed mandates, terms and conditions and operating procedures for the Escrow Account but in the event of any inconsistency between this Escrow Agreement and such mandates, terms and conditions or procedures in this Escrow Agreement shall prevail;
 - (iv) the Escrow Bank shall not have any interest, banker's lien, charge or right of set-off or grant any lien over the amounts lying to the credit of the Escrow Account; and
 - (v) no instructions shall be given to the Escrow Bank which is not contemplated by or which is contrary to or inconsistent with this Escrow Agreement. In the event any such inconsistent or contrary instruction is given, the same shall be null and void and the Escrow Bank shall not be obliged to act upon, and shall ignore, such instructions and continue to comply with the provisions of this Escrow Agreement.

2.3 Deposits into Escrow Account

- (a) Minimum Escrow Balance
 - (i) NMCG shall deposit in the Escrow Agreement an amount equivalent to the first Payment Milestone prior to the Effective Date. From the Effective Date

and during the Construction Period, NMCG shall ensure that the Escrow Account is funded with an amount equivalent to the next Payment Milestone; and

- (ii) on and from the COD and during the O&M Period, NMCG shall deposit the O&M Payments in the Escrow Account such that the Escrow Account is funded at all times with the Capex Annuities, the O&M Charges and the estimated Power Charges for the next 2 years,

(the **Minimum Escrow Balance**).

- (b) NMCG shall ensure that the minimum balance in the Escrow Account at all times during the Term is not less than the Minimum Escrow Balance.

If at any time during the O&M Period, the balance in the Escrow Account falls below the Minimum Escrow Balance, NMCG shall promptly, and in any event, no later than 90 days, fund the Escrow Account such that the Minimum Escrow Balance is maintained.

- (c) The Parties agree that a failure to maintain the Minimum Escrow Balance for 90 days would be treated as a NMCG Event of Default and in such case, the consequences set out in the Concession Agreement shall apply.
- (d) It is clarified that any interest earned on the amounts deposited by NMCG in the Escrow Account will be counted towards the Minimum Escrow Balance.

2.4 **Withdrawals from Escrow Account during the Construction Period**

- (a) Upon successful completion and verification of a Payment Milestone as per the Concession Agreement, the Jal Nigam is required to approve the Invoice raised by the Concessionaire within 10 days of receipt of the Invoice and issue a Payment Certificate to the Escrow Bank. The Payment Certificate shall convey the Jal Nigam's approval for the release of the amount specified in the Invoice for the relevant Payment Milestone, less any necessary deductions or adjustments in accordance with this Escrow Agreement and/or Applicable Laws (including for payments to be made by the Concessionaire under applicable labour laws).
- (b) If, within 10 days from the date of receipt of an Invoice, the Jal Nigam does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by the Jal Nigam, and the Concessionaire shall have the right to issue instructions to the Escrow Bank (with a copy to the Jal Nigam and NMCG) to release the amounts specified in the Invoice, upon the expiry of the 10-day period. Any such instruction issued by the Concessionaire to the Escrow Bank shall be accompanied with the Invoice raised by the Concessionaire for the relevant Payment Milestone.
- (c) Immediately upon receipt of a Payment Certificate from the Jal Nigam in accordance with clause 2.4(a) above or upon receipt of instructions from the Concessionaire in accordance with clause 2.4(b), the Escrow Bank shall release the amount specified in the Payment Certificate or if no Payment Certificate has been issued, then the amount

specified in the relevant Invoice to the bank account of the Concessionaire mentioned below:

Bank:
Account number:
BIC (SWIFT):
Address of Bank:
[Insert bank account details]

The Concessionaire may change the above bank account details by giving a 5-day prior written notice to the Escrow Bank, NMCG and the Jal Nigam.

- (d) Upon any termination of the Concession Agreement during the Construction Period, NMCG shall issue instructions to the Escrow Bank requesting it to release and transfer any amounts due and payable to the Concessionaire, including termination payments, if any, as certified by NMCG in a statement and any remaining amounts standing to the credit of the Escrow Account shall be transferred to the following account of NMCG:

Bank:
Account number:
BIC (SWIFT):
Address of Bank:
[Insert bank account details]

NMCG may change the above bank account details by giving 5-day prior written notice to the Escrow Bank, the Concessionaire and the Jal Nigam.

2.5 Identification and Separation

The Escrow Bank shall clearly identify in its records the Escrow Account as an escrow account and shall keep the funds standing to the credit of the Escrow Account separated and segregated from the Escrow Bank's own funds or funds of any of its other customers or third parties.

2.6 Fees

NMCG shall pay [Rs. [] per annum] as fees to the Escrow Bank for the establishment and management of the Escrow Account. NMCG shall pay such fees to the Escrow Bank within 10 days of receipt of an invoice from the Escrow Bank.

2.7 Escrow Account Statements

The Escrow Bank shall provide monthly statements regarding the Escrow Account to NMCG, the Jal Nigam and the Concessionaire.

3. ESCROW AMOUNT

- 3.1 Promptly upon NMCG transferring any amount to the Escrow Account, the Escrow Bank shall send a notice to the Concessionaire and the Jal Nigam notice informing them of the transfer.
- 3.2 The Escrow Bank shall hold all amounts in the Escrow for the sole benefit of the Concessionaire. Subject to clause 2.4(d) of this Escrow Agreement, the Escrow Bank shall not release any amount in the Escrow Account to any person other than the Concessionaire.
- 3.3 The Escrow Bank shall not apply any right of set-off against the amount in the Escrow Account, grant any lien over such amount, or apply any fee or deduction in relation to such amount.

4. **RIGHTS, DUTIES AND OBLIGATIONS OF THE ESCROW BANK**

4.1 The Escrow Bank:

- (a) may, in the absence of bad faith, fraud, wilful default or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of NMCG or the Jal Nigam, as the case may be, upon a certificate signed by or on behalf of NMCG or the Jal Nigam, as the case may be;
- (b) may, in the absence of bad faith, fraud, wilful default or gross negligence on its part, rely upon the authenticity of any communication or documents believed by it to be authentic;
- (c) shall, within 5 days after receipt, deliver a copy to the Jal Nigam and NMCG of any notice or document received by the Escrow Bank from the Concessionaire or any other Person hereunder or in connection herewith;
- (d) shall, within 5 days after receipt, deliver a copy to the Concessionaire of any notice or document received by the Escrow Bank from the Jal Nigam or NMCG in connection herewith; and
- (e) shall maintain all records of deposits and withdrawals from the Escrow Account for the term of this Escrow Agreement.

4.2 The duties of the Escrow Bank are only as herein specifically provided, and are purely administrative in nature. The Escrow Bank shall neither be liable for, nor chargeable with knowledge of, the terms and conditions of any other agreement, instrument or document in connection herewith, including, without limitation, the Concession Agreement, and shall be required to act in respect of the amounts in the Escrow Account only as provided in this Escrow Agreement. This Escrow Agreement sets out all the obligations of the Escrow Bank with respect to any and all matters pertinent to the Escrow Account contemplated hereunder and no additional obligations of the Escrow Bank shall be implied from the terms of any other agreement. The Escrow Bank shall incur no liability in connection with the discharge of its obligations under this Escrow Agreement or in connection therewith, except such liability as may arise from the Escrow Bank's negligence, wilful misconduct or otherwise from any breach of this Escrow Agreement. Such liability, however, shall not exceed the amount in the Escrow Account at the date of the said breach by the Escrow Bank.

- 4.3 The Escrow Bank shall not be required to perform any acts which will violate any Applicable Laws.
- 4.4 In the event of any bankruptcy proceedings or enforcement proceedings against any of the Parties pursuant to Applicable Laws, the Escrow Bank shall, notwithstanding the provisions of this Escrow Agreement, act and perform in accordance with Applicable Laws.

5. **ESCROW AGREEMENT DEFAULTS**

- 5.1 The following events shall constitute an event of default by the Concessionaire (an **Escrow Default**), unless such event of default has occurred as a result of any act or omission of NMCG or the Jal Nigam:
- (a) in case the Concessionaire diverts funds drawn from the Escrow Account for a project/activity/usage other than the Project, and fails to cure such breach by not depositing an equal amount in the Escrow Account within 5 days; or
 - (b) in the case of any other breach, by failing to remedy the breach within 5 days to the satisfaction of the Jal Nigam and NMCG.
- 5.2 The Parties agree that an Escrow Default in terms of this Escrow Agreement shall be treated as a Concessionaire Event of Default under the Concession Agreement, and the consequences of an Escrow Default shall be dealt with in accordance with the Concession Agreement.
- 5.3 Upon the occurrence of an Escrow Default, the Concessionaire agrees that NMCG shall have the right to direct the Escrow Bank to suspend withdrawals from the Escrow Account until further notice from NMCG.

6. **MISCELLANEOUS**

6.1 **Representations and Warranties**

Each Party represents and warrants that:

- (a) it has the authority to enter into this Escrow Agreement;
- (b) this Escrow Agreement constitutes a legally valid and binding obligation, enforceable against it in accordance with its terms;
- (c) its entry into and/or performance under this Escrow Agreement will not be in breach of any express or implied terms of any contract with or other obligation to any third party; and
- (d) it is solvent and able to perform all of its obligations under this Escrow Agreement.

6.2 **Notices**

Any notice or other communication to be given or made under this Escrow Agreement to the Parties shall be in writing. Except as otherwise provided in this Escrow Agreement, such notice, request or other communication shall be delivered by registered mail or facsimile to the Party(ies) at the following addresses:

NMCG: []

Uttar Pradesh Jal Nigam: []

[Concessionaire]: []

Escrow Bank: []

6.3 **Entire Agreement**

This Escrow Agreement constitutes the entire agreement and understanding between the Parties with respect to its subject matter (i.e., escrow arrangement) and replaces and supersedes all prior agreements, arrangements, undertakings or statements regarding such subject matter.

6.4 **Amendments**

No variation of or amendment to this Escrow Agreement shall be effective unless made in writing and executed by all the Parties hereto.

6.5 **Harmonious Construction**

For the purpose of giving full and proper effect to this Escrow Agreement, the Concession Agreement and this Escrow Agreement shall be read together and construed harmoniously. The terms of this Escrow Agreement shall prevail in the event of any inconsistencies with the Concession Agreement.

6.6 **Assignment**

Neither this Escrow Agreement nor any of the rights or obligations hereunder may be assigned by a Party without the prior written consent of the other Parties, provided that the Concessionaire shall be entitled, to the extent permitted by Applicable Law and as may be required under any Financing Documents entered into by the Concessionaire, to assign or create liens over its rights and interests under or pursuant to this Escrow Agreement.

6.7 **Severability**

Whenever possible, each provision of this Escrow Agreement shall be interpreted in such a way as to be effective and valid under Applicable Law, but if any provision of this Escrow Agreement is unenforceable or invalid under Applicable Law, such provision shall be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Escrow Agreement shall continue to be binding and in full force and effect.

6.8 **Confidentiality**

The Parties, their employees, representatives and agents shall keep the provisions of this Escrow Agreement strictly confidential and, except as may be required by Applicable Laws, shall make no disclosure thereof to any Person, except the Parties' respective legal counsels and professional advisers, without the prior written consent of the other Parties.

6.9 Termination

This Escrow Agreement shall be automatically terminated upon the expiry of the Term or termination of the Concession Agreement and after disbursement of all amounts due and payable to the Concessionaire under the Concession Agreement, including termination payments, if any.

6.10 Dispute Resolution Mechanism

- (a) If any dispute arises out of or in connection with this Escrow Agreement, this dispute shall not affect the Parties' duty to continue the performance of all of their undisputed obligations.
- (b) If any dispute arises, a Party shall give notice to the other Parties of the same, whereupon the Parties shall meet promptly and in good faith to attempt to reach an amicable settlement.
- (c) All disputes not settled amicably pursuant to (b) above shall be heard by the competent courts of Uttar Pradesh.

6.11 Governing Law

This Escrow Agreement shall be governed by and construed in accordance with the laws of India.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by its authorized representatives as of the date first written above.

For NMCG

By.
Name: []
Designation: []

For Uttar Pradesh Jal Nigam

By.
Name: []
Designation: []

For Concessionaire

By.
Name: []
Designation: []

For Escrow Bank

By.

Name: []
Designation: []